IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO.71 OF 2007

The Khatau Makanji Spinning and Weaving Company Limited ...Applicant

Versus

The Khatau Makanji Company Private Limited ...Respondent

Ms Rubia Taneja i/by M/s Jhangiani, Narula & Associates for the Applicant.

CORAM : ABHAY S.OKA, J.
DATED : JUNE 27, 2007.

P.C.:

1. Heard learned counsel appearing for the Applicant. The prayer in this Application is for transfer of a suit filed by the respondent in the Court of Small Causes at Bombay to this Court.

2. According to the case of the Applicant by a Deed of Lease dated 20th September, 1971 the Respondent granted lease in favour of the Applicant for a period of fifty years in respect of the property in dispute. There is a clause in Deed of Lease which entitles the Applicant to purchase the suit property. The Applicant claims to have exercised the option under the lease. On 12th August, 1988 the Applicants filed a suit for specific performance for enforcing the relevant clause in the Deed of Lease. The said suit is pending in this

Court. Thereafter, in the year 1989, the Respondent has filed a suit for eviction in the Court of Small Causes at Bombay.

3. The ground on which transfer is sought is that there are common issues of law and fact arising in both the suits and unless both the suits are decided by one and the same Court, there will be conflict of the findings.

4. I have considered the submissions. I have also perused the copies of the plaint in the suits. The suit filed by the Respondent is exclusively triable by the Court of Small Causes constituted under the the Presidency Small Cause Courts Act. The scope of both the suits is totally different. The cause of action for filing both the suits is also different. The nature of the reliefs claimed in the suits is also different. Only on the ground that the suit property is the same, order of transfer cannot be passed.

5. In view of this position, no case is made out for passing an order of transfer. Application is rejected.

JUDGE